IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2514 OF 2007
IN
WRIT PETITION NO.1885 OF 1986

Sakharam Shiva Bhosale, since deceased
by legal heirs and L.Rs.
1.Sahebrao S. Bhosale & Ors. ..Applicants.

V/s.

Rangnath P. Gosavi & Ors. ..Respondents.

Mr.P.B.Shah for Applicants.

Mr.S.P.Thorat for Respondent No.3.

Mr. V.S.Gokhale for Respondent Nos. 1,2,5 and 7.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 22, 2007.

P.C. :

1. Heard Mr.Shah for the Applicants. The Applicants are personally present in the Court. They have been identified by the Advocate appearing for them. Reliefs claimed in this application as amended read thus:

> "(a) The Judgment and Order dated 8.6.2004 passed in Writ Petition No.1885 of 1986 hereby confirming the order dated 12.12.1985 passed by Learned M.R.T. Pune in No.1 MRT-NS-V-10/83 (TENC-8 138/83) Pune and order dated 7.2.1983 passed by the Learned S.D.O. Koregoan Dist Satara in Tenancy Appeal No.18/1981 be set aside by way of Review and order of learned Tahsildar dated 23/7/1981 passed in Proceeding bearing

No.32-G-Nigadi-3, be restored ;

(b) The Purchase be declared in effective since the Opponents tenants are not in position to cultivate the land and pay the purchase price;

(c) The 32 M Certificate issued in favour of opponents U/s-32 of B.T.A.L.Act, 1948 be cancelled;

(d) The Possession of the land be restored in favour of the applicant;

(e) Delay, if any, in filing the present Civil Application be condoned;

(f) All other just inequitable relief granted in favour of the applicant in the interest of justice."

2. The background in which this application has been filed is that, this Court had occasion to consider Writ Petition No.1885 of 1986, filed by the Petitioners(Respondents in this application/original land owners). The said Writ Petition questioned the correctness of the order passed by the Maharashtra Revenue Tribunal, Pune dated December 12, 1985 in Revision No.1 MRT-NS-V-10-83. In substance, the issue which has been considered in the said Writ Petition is whether on non-payment of purchase price it is possible to straightaway declare the purchase having become ineffective within the meaning of provisions of Bombay Tenancy Agricultural Land Act, 1948. This has been considered in paragraph-5 of the

same decision dated 8th June, 2004 and has been answered against the Respondents herein(original Writ Petitioner/land owners). After having said that, the order passed by the appellate authority, which was subject matter of challenge before the tribunal remanding the proceedings to the lower authority, came to be upheld. The effect of the above said order passed by this Court is that the lower authority will have to examine all aspects of the matter including to explore possibility of recovery of purchase price as arrears of land revenue in terms of section 32(P) of the Act.

3. Inspite of such dispensation provided in the order dated 8th June, 2004, the tenants, in whose favour the order operates, have filed the present application not only for review of my order dated 8th June, 2007, but also for setting aside the order passed by the Appellate authority and instead to uphold the order of the lower authority declaring the purchase having become ineffective. If this prayer is accepted, it will enure to the benefit of the original land owner(Respondents).

4. It is not possible to accede to such prayer at this stage for two reasons. Firstly because, the

Writ Petition has been decided on merits after hearing both sides on 8th June, 2004. This Court has become functuous officio. Secondly, assuming that if the prayer of the Applicants who were Respondents in the said Writ Petition was to review the order dated 8th June, 2004, that request cannot be acceded to as the view recorded in the decision dated 8th June, 2004 is on the consideration of relevant provisions of law. By no stretch of imagination the Applicants herein, who are Respondents in the Writ Petition, in whose favour Writ Petition has been decided, can be heard to make grievance that the view taken by this Court is an error apparent on the face of the record and has caused manifest injustice to them. At their instance, the question of review of such order is unfathomable.

5. Even if this Court were to examine the correctness of the stand of the Applicants, after having interviewed the Applicants personally in Court, in the presence of the advocate, the impression that I have gathered is that they are placed in unequal bargaining position. The reason which has prompted them to take such a drastic decision, which is indeed a matter of moment for them-so as to give up their rights and ownership in

the suit property, is not forthcoming. In fact, the Applicants/original Respondents/tenants are not in a position to state any clear reason except the reason stated by the Applicant No.1 Sahebrao that he has spent substantial amount to perform marriages of his five sisters and had taken loan from the Respondent No.1 (Dr.Gosavi). No contemporaneous material is produced to substantiate the stand so taken, at least before this Court. Besides, whether that can be a tangible ground to accede to the prayer of the Applicants appears to be doubtful.

6. Taking overall view of the matter, it is not possible to accede to the request of the Applicants to permit them to give up their claim in the suit property. This is so because, even if the Applicants have no intention to pay the purchase price, in view of the opinion recorded in the Order dated 8th June, 2004, it is for the competent authority to recover such purchase prices as arrears of land revenue. Unless that procedure was to be adhered to and found to be insufficient or incapable, the question of straight away declaring purchase having become ineffective does not arise. In other words, the declaration already made by the competent authority that the Respondents are the deemed purchasers cannot

be overturned in this manner. The fact that the Applicants are not in a position to cultivate the lands by itself may not be a tangible reason for declaring the purchase having become ineffective within the meaning of section 32(P) of the Act or for that matter for cancelling the certificate issued under section 32(M) of the Act.

7. Suffice it to observe that there is no merits in this application. The same will have to be rejected.

8. Counsel for the Applicants however, submits that as the Applicants are more than determined that they do not intend to cultivate the suit land or to pay the purchase price, it would be appropriate and in the interest of justice to accede to the request of the Applicants to declare purchase ineffective and to cancel the certificate under Section 32(M) of the Act operating in their favour. It is not possible to countenance this submission. The law mandates that if the tenant is found in possession of the suit land on the relevant date, in law he becomes purchaser and owner thereof on complying with certain requirements. The Applicants/Respondents have already been declared as purchasers and the only other procedure that

remains to be complied with by the Applicants is to pay the purchase price already determined by the Tenancy Authority in the sum only of Rs.6,803.50 for a land which is about 2 acres situated at Nigadi, Taluka Koregaon, District Satara.

9. After these observations have been made, counsel for the Applicants submits that in that case, the Applicants be permitted to withdraw this application so that the Applicants can pursue appropriate remedy before the lower authority where the matter will be enquired into in terms of the remand order passed by the appellate authority. In view of the oral request made by the Counsel for the applicant, Application is dismissed as withdrawn with liberty to the parties to pursue their respective remedies before the appropriate forum, as may be advised. Those proceedings will have to be decided on its own merits in accordance with the law and not on the basis of concession to be given by the Applicants as has been given in the present application or before the Court at the hearing of this application.

(A.M.KHANWILKAR,J)